

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRETT JOHNSON,
obo himself, and others similarly situated,

6:10-CV-346
(DNH/ATB)

Plaintiffs,

-v-

WAVE COMM GR LLC; ROBERT GUILLERAULT,
individually; and RICHARD RUZZO, individually,

Defendants.

APPEARANCES:

NICHOLS KASTER LLP
Attorneys for Plaintiffs
4600 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

PAUL J. LUKAS, ESQ.
TIMOTHY C. SELANDER, ESQ.

THOMAS & SOLOMON LLP
Attorneys for Plaintiffs
693 East Avenue
Rochester, NY 14607

J. NELSON THOMAS, ESQ.
PATRICK J. SOLOMON, ESQ.
JUSTIN M. CORDELLO, ESQ.

Girvin & Ferlazzo P.C.
Attorneys for Defendants
20 Corporate Woods Boulevard
2nd Floor
Albany, NY 12211

SCOTT P. QUESNEL, ESQ.
PATRICK J. FITZGERALD, III, ESQ.

DAVID N. HURD
United States District Judge

DECISION and ORDER

Plaintiff Brett Johnson brought this action on behalf of himself and others similarly situated against defendants asserting claims under the Fair Labor Standards Act ("FLSA") and New York Labor Law ("NYLL"). On January 29, 2013, the Honorable Andrew T. Baxter, United States Magistrate Judge, advised by Report-Recommendation: (1) dismissal, with prejudice, of the claims of the 13 unresponsive opt-in plaintiffs under the FLSA and (2) dismissal of their claims, as named plaintiffs, under the NYLL, without prejudice to their future participation, to the extent the court deems appropriate, as class members on these state law claims if the Rule 23 class action remains certified. No objections to the Report-Recommendation were filed.¹

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Accordingly, it is

ORDERED that

1. Defendants' motion to dismiss all claims of the unresponsive 13 opt-in plaintiffs (Dkt. No. 122) is GRANTED in part and DENIED in part;
2. The claims of plaintiffs Anthony Calenda, Jr.; Edward Coffin; Travis DeRuby; Matthew Helmer; Mike Helmer; Justin Jones; Arthur Mucitelli; Chris Nobles; Salomon Pierre;

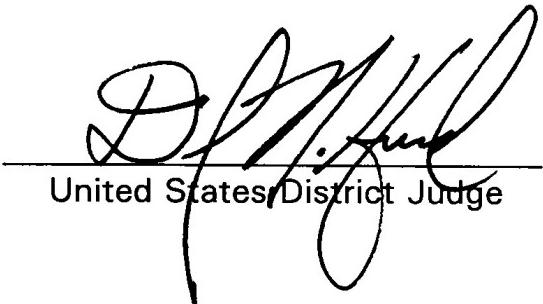
¹ Class counsel was previously allowed to withdraw from the representation of these 13 unresponsive individuals, and as such, class counsel has not opposed defendants' motion. None of the 13 pro se plaintiffs responded to the motion.

John Curley, Jr.; James Quinn; Tim Rigdon and Jesus Resendiz under the Fair Labor Standards Act are DISMISSED with prejudice;

3. The claims of plaintiffs Anthony Calenda, Jr.; Edward Coffin; Travis DeRuby; Matthew Helmer; Mike Helmer; Justin Jones; Arthur Mucitelli; Chris Nobles; Salomon Pierre; John Curley, Jr.; James Quinn; Tim Rigdon; and Jesus Resendiz under the New York Labor Law are DISMISSED without prejudice to their future participation, to the extent the court deems appropriate, as absent class members on those state law claims, if the Rule 23 class action remains certified; and

4. On consent of defendants, their counterclaims for unjust enrichment against plaintiffs Anthony Calenda, Jr.; Edward Coffin; Travis DeRuby; Matthew Helmer; Mike Helmer; Justin Jones; Arthur Mucitelli; Chris Nobles; Salomon Pierre; John Curley, Jr.; James Quinn; Tim Rigdon; and Jesus Resendiz, are DISMISSED without prejudice to renewal to the extent one or more of these plaintiffs are allowed to participate in the future as class members in connection with the New York Labor Law claims.

IT IS SO ORDERED.



United States District Judge

Dated: March 12, 2013
Utica, New York.